

**ASSEMBLY BILL**

**No. 1018**

**Introduced by Assembly Member Nava**

February 22, 2005

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An act to amend Sections 4062.2, 4604.5, and 4661 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1018, as introduced, Nava. Workers' compensation: medical care and benefits.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law contains provisions relating to comprehensive medical evaluations, medical treatment guidelines, and disability benefits.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 4062.2 of the Labor Code is amended to
- 2 read:
- 3 4062.2. (a) Whenever a comprehensive medical evaluation is
- 4 required to resolve any dispute arising out of an injury or a
- 5 claimed injury occurring on or after January 1, 2005, and the
- 6 employee is represented by an attorney, the evaluation shall be
- 7 obtained only as provided in this section.

(b) If either party requests a medical evaluation pursuant to Section 4060, 4061, or 4062, either party may commence the selection process for an agreed medical evaluator by making a written request naming at least one proposed physician to be the evaluator. The parties shall seek agreement with the other party on the physician, who need not be a qualified medical evaluator, to prepare a report resolving the disputed issue. If no agreement is reached within 10 days of the first written proposal that names a proposed agreed medical evaluator, or any additional time not to exceed 20 days agreed to by the parties, either party may request the assignment of a three-member panel of qualified medical evaluators to conduct a comprehensive medical evaluation. The party submitting the request shall designate the specialty of the medical evaluator, the specialty of the medical evaluator requested by the other party if it has been made known to the party submitting the request, and the specialty of the treating physician. The party submitting the request form shall serve a copy of the request form on the other party.

(c) Within 10 days of assignment of the panel by the administrative director, the parties shall confer and attempt to agree upon an agreed medical evaluator selected from the panel. If the parties have not agreed on a medical evaluator from the panel by the 10th day after assignment of the panel, each party may then strike one name from the panel. The remaining qualified medical evaluator shall serve as the medical evaluator. If a party fails to exercise the right to strike a name from the panel within three working days of gaining the right to do so, the other party may select any physician who remains on the panel to serve as the medical evaluator. The administrative director may prescribe the form, the manner, or both, by which the parties shall conduct the selection process.

(d) The represented employee shall be responsible for arranging the appointment for the examination, but upon his or her failure to inform the employer of the appointment within 10 days after the medical evaluator has been selected, the employer may arrange the appointment and notify the employee of the arrangements.

(e) ~~If an~~ An employee *who* has received a comprehensive medical-legal evaluation under this section; and ~~he or she~~ later

1 ceases to be represented, ~~he or she~~ shall not be entitled to an  
2 additional evaluation.

3 SEC. 2. Section 4604.5 of the Labor Code is amended to read:

4 4604.5. (a) Upon adoption by the administrative director of a  
5 medical treatment utilization schedule pursuant to Section  
6 5307.27, the recommended guidelines set forth in the schedule  
7 shall be presumptively correct on the issue of extent and scope of  
8 medical treatment. The presumption is rebuttable and may be  
9 controverted by a preponderance of the scientific medical  
10 evidence establishing that a variance from the guidelines is  
11 reasonably required to cure or relieve the injured worker from the  
12 effects of his or her injury. The presumption created is one  
13 affecting the burden of proof.

14 (b) The recommended guidelines set forth in the schedule  
15 adopted pursuant to subdivision (a) shall reflect practices that are  
16 evidence and scientifically based, nationally recognized, and  
17 peer-reviewed. The guidelines shall be designed to assist  
18 providers by offering an analytical framework for the evaluation  
19 and treatment of injured workers, and shall constitute care in  
20 accordance with Section 4600 for all injured workers diagnosed  
21 with industrial conditions.

22 (c) Three months after the publication date of the updated  
23 American College of Occupational and Environmental  
24 Medicine's Occupational Medicine Practice Guidelines, and  
25 continuing until the effective date of a medical treatment  
26 utilization schedule, pursuant to Section 5307.27, the  
27 recommended guidelines set forth in the American College of  
28 Occupational and Environmental Medicine's Occupational  
29 Medicine Practice Guidelines shall be presumptively correct on  
30 the issue of extent and scope of medical treatment, regardless of  
31 date of injury. The presumption is rebuttable and may be  
32 controverted by a preponderance of the evidence establishing that  
33 a variance from the guidelines is reasonably required to cure and  
34 relieve the employee from the effects of his or her injury, in  
35 accordance with Section 4600. The presumption created is one  
36 affecting the burden of proof.

37 (d) (1) Notwithstanding the medical treatment utilization  
38 schedule or the guidelines set forth in the American College of  
39 Occupational and Environmental Medicine's Occupational  
40 Medicine Practice Guidelines, for injuries occurring on and after

1 January 1, 2004, an employee shall be entitled to no more than  
2 24 chiropractic, 24 occupational therapy, and 24 physical therapy  
3 visits per industrial injury.

4 (2) This subdivision shall not apply when an employer  
5 authorizes, in writing, additional visits to a health care  
6 practitioner for physical medicine services.

7 (e) For all injuries not covered by the American College of  
8 Occupational and Environmental Medicine's Occupational  
9 Medicine Practice Guidelines or official utilization schedule after  
10 adoption pursuant to Section 5307.27, authorized treatment shall  
11 be *provided* in accordance with other evidence based medical  
12 treatment guidelines generally recognized by the national  
13 medical community and that are scientifically based.

14 SEC. 3. Section 4661 of the Labor Code is amended to read:

15 4661. ~~Where~~ *When* an injury causes both temporary and  
16 permanent disability, the injured employee is entitled to  
17 compensation for any permanent disability sustained by him *or*  
18 *her* in addition to any payment received by ~~such~~ *that* injured  
19 employee for temporary disability.

20 Every computation made pursuant to this section shall be made  
21 only with reference to disability resulting from an original injury  
22 sustained after this section as amended during the 1949 Regular  
23 Session of the Legislature becomes effective; ~~provided, however,~~  
24 ~~that~~. *However*, all rights presently existing under this section  
25 shall be continued in force.